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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 BRADLEY WOOLARD,
13 JOSE FELICIANO LUGO, and
14 JEROME ISHAM,

15 Defendants.

CASE NO. CR18-217RSM

ORDER DENYING DEFENDANTS'
MOTIONS TO SEVER COUNTS

16 This matter comes before the Court on Defendant Woolard's Motion to Sever Count 8,
17 Dkt. #390, Defendant Lugo's Motion to Sever Count 46, Dkt #412, and Defendant Isham's
18 Motion to Sever Counts 32 and 33, Dkt #437. The Government has filed opposition briefs to the
19 first two Motions. Dkts. #519 and #533. Woolard and Lugo have filed Reply briefs. Dkts. #576
20 and #589. For the reasons stated below, the Court DENIES all three Motions.

21 **A. Legal Standard**

22 Rule 8(a) states:

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24 The indictment or information may charge a defendant in separate
25 counts with 2 or more offenses if the offenses charged—whether
26 felonies or misdemeanors or both—are of the same or similar
27 character, or are based on the same act or transaction, or are
connected with or constitute parts of a common scheme or plan.

1 The rule “should be construed broadly in favor of initial joinder.” *United States v. Golb*, 69 F.3d
2 1417, 1425 (9th Cir. 1995); *United States v. Ford*, 632 F.2d 1354, 1373 (9th Cir.), *cert. denied*,
3 450 U.S. 934, 101 S.Ct. 1399, 67 L.Ed.2d 369 (1981). The term “transaction” is interpreted
4 flexibly, and “whether a ‘series’ exists depends on whether there is a ‘logical relationship’
5 between the transactions.” *United States v. Vasquez-Velasco*, 15 F.3d 833, 843 (9th Cir.1994)
6 (citations omitted). Joinder of charges against multiple defendants is particularly appropriate
7 when the charges involve substantially overlapping evidence. *Id.* at 844.
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9 Rule 14 states, “[i]f the joinder of offenses or defendants in an indictment, an information,
10 or a consolidation for trial appears to prejudice a defendant or the government, the court may
11 order separate trials of counts, sever the defendants’ trials, or provide any other relief that justice
12 requires.” Fed. R. Crim. P. 14(a). “Joinder is not prejudicial where all of the evidence of the
13 separate count would [still] be admissible upon severance.” *United States v. Prigge*, 830 F.3d
14 1094, 1098 (9th Cir. 2016) (internal citations omitted).
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16 **B. Defendant Woolard**

17 Defendant Woolard takes issue with the joinder of Count 8, being an “unlawful user of a
18 controlled substance in possession of firearms.” The charge alleges:

19 Beginning on a date unknown but at least by July 27, 2018, and
20 continuing through on or about August 19, 2018, at Arlington, in
21 Snohomish County, within the Western District of Washington, and
22 elsewhere, BRADLEY WOOLARD, then knowing he was addicted
23 to a controlled substance and was an unlawful user of a controlled
substance, did knowingly possess in and affecting interstate and
foreign commerce firearms, that is: [list of 33 firearms].

24 Dkt. #279 (“Third Superseding Indictment”) at 7–9. Mr. Woolard argues that evidence of his
25 drug use, frequency of drug use and drug addiction “has no bearing on any of the other charges
26 but such evidence is extremely prejudicial.... When joined with the other 26 counts against
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1 Woolard [because] a jury might assume that a drug addict would be more likely to engage in the
2 other alleged crimes or have a criminal disposition.” Dkt. #390 at 2.

3 The Government argues that the “[t]he evidence of Woolard’s drug habit is likely to be
4 admissible against Woolard even if Count 8 were severed, because it provides obviously relevant
5 evidence of Woolard’s overriding motive to engage in drug trafficking: easy access to drugs to
6 satisfy his own habit, and the money necessary to fuel that habit and his expensive trips to
7 rehabilitation centers.” Dkt. #519 at 4. The Government cites to several cases where drug
8 addiction testimony was admissible to prove motive and found not to be overly prejudicial. *Id.*
9 (citing *United States v. Miranda*, 986 F.2d 1283, 1285 (9th Cir.1992); *United States v. Bitterman*,
10 320 F.3d 723, 727 (7th Cir. 2003); *United States v. Kadough*, 768 F.2d 20 (1st Cir. 1985); *United*
11 *States v. Thompson*, 2007 WL 756712 (N.D. Oklahoma 2007)). The Government also maintains
12 that any prejudice here would “be minimal” because “evidence of Woolard’s other charged
13 conduct is far more unseemly than the mere drug use or addiction alleged in Count 8.” *Id.* at 5.
14 The Government speculates that “evidence that Woolard was also a drug user is likely to be a
15 significant *mitigating* factor.” *Id.* (emphasis in original).

16 The Court finds Mr. Woolard has failed to show that evidence of his drug use, frequency
17 of drug use or drug addiction have no bearing on any of the other charges. Such may be used to
18 demonstrate motive for the reasons set forth by the Government. Furthermore, Mr. Woolard has
19 failed to demonstrate prejudice given the other evidence that will be presented, and even if there
20 were minimal prejudice it would not outweigh the significant benefits to judicial economy of
21 joinder. The Court agrees with the Government that the proof as to Count 8 overlaps with proof
22 as to other counts, *e.g.* the possession of firearms, and there will be the same witnesses testifying
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1 about drug-use and drug distribution. *See* Dkt. #519 at 5–6. This Motion will be denied.
2 Defendant may raise the issue of a limiting instruction at trial.

3 **C. Defendant Lugo**

4 Defendant Lugo moves to sever Count 46 of the Third Superseding Indictment, Felon in
5 Possession of Firearms:

6 Beginning on a date unknown, but at least by March 25, 2017, at
7 Arlington, in Snohomish County, within the Western District of
8 Washington, and elsewhere, Jose Feliciano Lugo, knowing that the
9 had been convicted of the following crime punishable by
10 imprisonment for a term exceeding one year [distribution of
11 oxycodone] ...did knowingly possess, and did aid and abet in the
possession of, in and affecting interstate and foreign commerce
firearms, that is: [list of 13 firearms].

12 Dkt. #279 at 24–25. Mr. Lugo argues that the Government’s only evidence supporting this count
13 are text messages with co-defendant Woolard discussing the sale of firearms and that the
14 Government has never argued that this transaction with Mr. Woolard “had anything to do with
15 the charged narcotics conspiracy in Count 1, or the related substantive counts.” Dkt. #412 at 3.
16 Mr. Lugo argues that text messages show this firearms transaction was meant to be kept secret
17 from Mr. Woolard’s wife, an alleged co-conspirator, and that this shows it was not a transaction
18 connected to the conspiracy. *Id.* at 3.

19 The Government argues Mr. Lugo sold these firearms to Mr. Woolard with the help of
20 another co-defendant, Mr. Pelayo, and that these firearms were used in furtherance of the drug
21 trafficking conspiracy. Dkt. #533 at 5–6. All of this occurred using the same phones used in the
22 Count 1 conspiracy. There is enough factual connection to the other counts to justify joinder
23 under Rule 8 here, despite the unknown reasons why Mr. Woolard’s wife was to be kept in the
24 dark. There are apparently no witnesses or exhibits unique to count 46, *i.e.* every witness and
25 exhibit that the government would offer to prove this count will also be presented at the trial-in-
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1 chief if it were severed. The Government maintains that Mr. Lugo has failed to show prejudice,
2 and that all of this evidence would still be admissible at the trial-in-chief. For example, the
3 Government argues that evidence of Mr. Lugo's prior conviction would still be admissible:

4 Lugo's prior conviction for drug trafficking, and the facts
5 underlying it—specifically, that Lugo delivered oxycodone pills to
6 an undercover officer at the behest of a co-conspirator, conduct that
7 is similar to what the evidence shows was part of Lugo's role in this
8 conspiracy—would be offered to show Lugo's knowledge, intent,
9 and lack of mistake in the current case.

10 Dkt. #533 at 8 (citing *United States v. Vo*, 413 F.3d 1010, 1018 (9th Cir. 2005)).

11 The Court agrees that Mr. Lugo has failed to demonstrate prejudice, that the charges are
12 logically connected and involve substantially overlapping evidence, and that judicial economy
13 would not be served by severance. This Motion will be denied. Defendant may raise the issue
14 of a limiting instruction at trial.

15 **D. Defendant Isham**

16 Defendant Isham moves to sever Counts 32 and 33 of the Third Superseding Indictment,
17 Felon in Possession of a Firearm and Possession of a Firearm in Furtherance of a Drug
18 Trafficking Offense. *See* Dkt. #279 at 18–19. These counts are based on an arrest and search on
19 August 3, 2018, when Mr. Isham was allegedly found in possession of illegal drugs and a firearm.
20 The other counts filed against him are the above Count 1 conspiracy, as well as counts for
21 possession and attempted possession of furanyl fentanyl with intent to distribute. *Id.* Mr. Isham
22 argues that “severance or bifurcation of the firearm counts from the drug count is appropriate to
23 avoid having the jury in the drug trial learn that defendant is either a felon or was in possession
24 of a firearm.” Dkt. #437 at 3.

25 Given the above standards, Mr. Isham has failed to demonstrate that these charges are not
26 logically connected to the remaining charges. They involve substantially overlapping evidence.
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1 If the Government is going to prove that the possession of the firearm was in furtherance of a
2 drug trafficking offense, the evidence will be logically connected to the drug trafficking
3 conspiracy offense, the possession and attempted possession offenses, and the felon in possession
4 of a firearm offense. The Court does not need briefing from the Government to know that many
5 of the same arguments above would apply, *e.g.* the witnesses who will testify as to these two
6 counts will already be called in the case-in-chief, and prejudice would be minimal because the
7 same evidence would be admissible even if these counts were severed. Judicial economy would
8 not be served by severance. This Motion will be denied. Defendant may raise the issue of a
9 limiting instruction at trial.
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11 Accordingly, having reviewed the briefing, along with the remainder of the record, the
12 Court hereby finds and ORDERS that Defendant Woolard's Motion to Sever, Dkt. #390,
13 Defendant Lugo's Motion to Sever, Dkt #412, and Defendant Isham's Motion to Sever, Dkt #437,
14 are DENIED.
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16 DATED this 30th day of April, 2021.
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20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
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